

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0349P
Failure to File Penalty
For Years 1999, 2000, and 2001

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ISSUE

I. Tax Administration- Twenty Percent (20%) Failure to File Penalty

Authority: § 6-8.1-10-3; 45 IAC 2.2-3-9; IC 6-2.5-3-5.

The taxpayer protests the imposition of the twenty percent (20%) failure to file penalty.

STATEMENT OF FACTS

Taxpayer, an S corporation, is an Illinois contractor that makes improvements to real property. Taxpayer sells and installs windows, siding, doors, and sunrooms. Taxpayer subcontracts all construction labor. Taxpayer has no property in Indiana, but does business with Indiana customers.

I. Tax Administration- Twenty Percent (20%) Failure to File Penalty

DISCUSSION

The taxpayer protests the imposition of the twenty percent (20%) failure to file penalty pursuant to IC § 6-8.1-10-3. Said statute reads:

- (a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.
- (b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20%) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is

in place of and not in addition to the penalties imposed under any other section.

Taxpayer claims it believes, under the tax statutes of Illinois, that it was properly paying sales tax on items it was purchasing for materials incorporated into real property in Indiana. The auditor assessed Indiana use tax on those materials pursuant to 45 IAC 2.2-3-9. Taxpayer believes that if it correctly paid the sales tax to Illinois, it would be entitled to an offsetting credit to the use tax assessed against it by Indiana pursuant to IC 6-2.5-3-5.

The Department declines taxpayer's invitation to determine whether or not Illinois sales tax was correctly paid. The Department normally makes no rulings with regard to the laws of other states, nor does it interpret the application of those laws. And while an analysis that would tend to show that taxpayer was correct in its payment of Illinois sales tax might alter the assessment for underpayment, taxpayer has not filed an Indiana tax return through which it could claim the credit granted by IC 6-2.5-3-5. Therefore, the Department also need not determine whether or not credit would have been granted pursuant to that statute.

As such, taxpayer's failure to file an Indiana return leaves it without a basis for protesting the penalties assessed against it.

FINDING

The taxpayer's protest is respectfully denied.